

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 47 of 1998

in

COMPANY PETITION No 241 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 NO

GUJARAT STATE FINANCIAL SERVICES LTD.

Versus

HYNOUP FOOD & OIL INDUSTRIES LTD.

Appearance:

MR BR GUPTA for Petitioner

MR ASHOK L SHAH for Respondent

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 01/04/98

ORAL JUDGEMENT

Heard Mr.B.R.Gupta for the applicant. This application seeks drawing of a decree in accordance with the consent terms dated 6.8.1997 recorded in Company

Petition No.241 of 1996 under Order XXIII Rule 3 of the Code of Civil Procedure or alternatively revival of Company Petition No.241 of 1996. Mr.Gupta appears for the applicant and Mr.Ashok Shah appears for the opponent original respondent.

2. Company Petition No.241 of 1996 was filed by the applicant to wind up the opponent Company. In that matter, consent terms were arrived at on 6.8.1997. In those consent terms, it was agreed that Rs.45 lakh are due from the respondent to the petitioner and this amount was decided to be paid in a particular manner: the first five instalments were of Rs.2 lakh each and the remaining instalments were to be of 2.5 lakh each. The first of these instalments was to be paid on or before 14.8.1997 and the succeeding instalments were to be paid on or before the 14th of next succeeding month. However, as a gesture of goodwill, the respondent paid the first two instalments totalling to Rs.4 lakh in advance on 18.7.1997 by a demand draft dt. 14.7.1997 and that was recorded in the consent terms. The respondent was to pay interest at the rate of 27.5% per annum on the principle amount and its reducing balance and the accruing interest was to be paid along with the last instalment.

3. After recording these details with respect to the payments, the consent terms stated further as follows:

"On these consent terms being filed in this Hon.'ble Court, the petitioner shall withdraw all proceedings initiated by it against the respondent and others including the criminal complaints/ cases filed by it against the respondent company and other/s in the Court of the Metropolitan Magistrate at Ahmedabad."

4. On these consent terms being filed, the petitioner withdrew that petition with liberty to revive it in case of difficulty.

5. This application is filed making a grievance that the subsequent instalments were not paid and, therefore, a decree be passed under Order XXIII Rule 3 or alternatively the petition be revived. As against that, reply has been filed by the respondent opposing this revival as also the decree. It is also stated across the Bar that there were two criminal cases pending in the Magistrate's Court as on the date of filing of the consent terms and that they have not been withdrawn so far. Mr.Gupta appearing for the applicant does not dispute this. It is also stated by Mr.Shah that apart

from non-withdrawal of these cases, there have been some financial difficulties because of which there has been delay in clearing the remaining instalments. He, however, stated that, in case the applicant withdrew those two criminal cases, the respondent was ready and willing to pay the next two instalments immediately. He, showed the demand drafts kept ready for this purpose. He, however, sought a little relaxation for a period of two months with respect to the remaining three instalments.

6. As against that, Mr.Gupta appearing for the applicant submits that the applicant has not proceeded with those cases. Mr.Shah, on the other hand, submitted that it was agreed in the consent terms that those cases were to be withdrawn but, in fact, it has not been done. Mr.Shah, therefore, submitted that, in these circumstances, the respondent could not be faulted with for there being a delay on their part in complying with the remaining terms of the consent terms.

7. Mr.Gupta relied upon a judgment of the Calcutta High Court 43 (1973) Company Cases 556 in the case of TECHNO METAL INDIA (P) LTD. v. PREM NATH ANAND and submitted that the Calcutta High Court held as: "Having regard to the concept of winding up as a mode of enforcement of payment of a debt, an application for winding up is on par with a suit for enforcement of a debt." He also relied upon Rule 6 of the Company (Court) Rules 1959 which provides for the practice and procedure of the Court and states that the provisions of the Code of Civil Procedure as far as applicable were to be applied towards the proceedings under the Act. He also relied upon Order XXIII Rule 3 of the Code of Civil Procedure which provides that, where it is proved to the satisfaction of the court that a suit has been adjusted, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith.

8. Mr.Shah has relied upon an unreported judgment of S.D.Pandit, J. in Company Application No.35 of 1997 in Company Petition No.245 of 1996 wherein the learned Judge has held that, though there is a breach of consent terms, revival of a petition is not the proper remedy. In the instant case, that is the alternative submission of Mr.Gupta. As far as the first submission of Mr.Gupta is concerned, namely, a decree be drawn, Mr.Shah submitted that a petition under the Companies Act cannot be compared with a civil suit. That apart, the company before the Calcutta High Court was in complete default with respect to the consent terms and under those

circumstances the Calcutta High Court had taken the view as stated above. In the present case, the applicant himself is in breach of the consent terms for not having withdrawn the criminal cases against the respondent. Not only that, when further payments were being assured with a little relaxation which had become necessary because of certain financial difficulties, the applicant has turned it down. In these circumstances, in my view, it would not be proper to grant the first prayer made by them. As far as the second prayer for revival of the petition is concerned, without going into the aspect with respect to the legal position in that regard as submitted by Mr. Shah, the applicant himself is in breach of the consent terms. He cannot seek revival of the petition. In the circumstances, this application is rejected with respect to both the prayers made in this application. Application stands disposed of.

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[KMG Thilake]